

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

Proposed Rule

January 31, 2017

**CHAPTER 69-02-09
PROCEDURES FOR PROTECTING INFORMATION FROM DISCLOSURE**

69-02-09-01. Application to protect information.

Except as provided in section 69-02-09-13, ~~an applicant~~ a person requesting protection of information in an administrative proceeding or in a response to a commission request for information shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected.
2. The specific law or rule on which protection is based.
3. If the basis for protection is that the information is trade secret:
 - a. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
 - b. An explanation of why the information is not readily ascertainable by proper means by other persons;
 - c. A general description of the persons or entities that would obtain

- economic value from disclosure or use of the information;
- d. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
 - e. A description of the efforts used to maintain the secrecy of the information.
- 4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information qualifies for protection.
 - 5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

History: Effective March 1, 1994; amended effective April 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-02. Filing of application.

- 1. The application must be addressed to and filed with the executive secretary of the commission.
- 2. The protected material filed with the application or pursuant to section 69-02-09-13 must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **PROTECTED INFORMATION - PRIVATE**. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the

commission. Only one copy of the protected material may be filed.

History: Effective March 1, 1994; amended effective April 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-03. Processing the application.

When an application for protection of information is filed, the commission staff shall examine the information and application, and file and serve a response that includes a recommendation on whether the information qualifies for protection. If the basis for requesting protection is that the information is trade secret, the staff response must include a recommendation on whether the information is relevant and is trade secret, under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from the application, the recommendation, and any response received from those served.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-04. Protective order.

Upon a determination that information qualifies for protection, the commission shall issue a protective order limiting disclosure.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-05. Request for hearing - Who may request - Time - Burden of proof.

1. Upon a determination that the information does not qualify for protection,

the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.

2. If any person disagrees with the designation of information as protected or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If the dispute cannot be resolved, any person may request a hearing before the commission to determine the protected status.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-13. Information filed under sections ~~69-09-05-12~~ and ~~69-09-05-12.1~~ by telecommunications companies.

~~Information filed to comply with subdivision b of subsection 3 of section 69-09-05-12 or section 69-09-05-12.1~~ identified in subsections one through five of this section is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections ~~69-02-09-01~~ 69-02-09-01(1) through ~~69-02-09-04~~ 69-02-09-01(4), 69-02-09-02(1), 69-02-09-03, 69-02-09-04, and 69-02-09-05(1) do not apply to information filed ~~to comply with subdivision b of subsection 3 of section 69-09-05-12, or subsections 1, 2, or 3 of section 69-09-05-12.1~~ under this section.

1. Detailed information concerning telecommunications infrastructure projects.

2. Disaggregated data on provisioned volumes of local services by service type and local exchange.
3. Disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange.
4. Detailed information on service outages as defined in Title 47 Code of Federal Regulations, Part 4, Section 4.5, in effect as of January 30, 2017.
5. Financial information required by the Federal Communications Commission to be copied to the commission, accompanied by the filing of a copy of the Federal Communication Commission's Protective Order for that information.

History: Effective April 1, 2015; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1